

**EXHIBIT F**

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-99000-smb

4 - - - - - x

5 In the Matter of:

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7 ADMINISTRATIVE CASE RE: 08-01789 (SECURITIES INVEST-

8 ADVERSARY PROCEEDING) ,

9

10 Debtor.

11 - - - - - x

12

13 Adv. Case No. 10-04995-smb

14 - - - - - x

15 IRVING H. PICARD, TRUSTEE FOR THE LIQUIDATION OF BERNARD L.

16 MADOFF INVESTMENT SECURITIES LLC,

17 Plaintiff,

18 v.

19 TRUST u/art FOURTH o/w/o ISRAEL WILENITZ,

20 Defendants.

21 - - - - - x

22

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25

1 Adv. Case No. 10-05184-smb

2 - - - - - x

3 IRVING H. PICARD, TRUSTEE FOR THE LIQUIDATION OF BERNARD L.

4 MADOFF INVESTMENT SECURITIES LLC,

5 Plaintiff,

6 v.

7 LAURA ANN SMITH REVOCABLE LIVING TRUST et al,

8 Defendants.

9 - - - - - x

10

11 Adv. Case No. 10-04352-smb

12 - - - - - x

13 IRVING H. PICARD, TRUSTEE FOR THE LIQUIDATION OF BERNARD L.

14 MADOFF INVESTMENT SECURITIES LLC,

15 Plaintiff,

16 v.

17 RAR ENTREPRENEURIAL FUND. LTD. et al.,

18 Defendants.

19 - - - - - x

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1 U.S. Bankruptcy Court  
2 One Bowling Green  
3 New York, NY 10004  
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5 May 17, 2016  
6 10:51 AM  
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9 B E F O R E :

10 HON STUART M. BERNSTEIN  
11 U.S. BANKRUPTCY JUDGE  
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15 Hearing re: 10-04995-smb, 10-05184-smb, 10-04352-smb The  
16 Trustee's Request For Leave To File A Motion For a  
17 Protective Order in Wilentiz.  
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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

2

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16 BY: EDWARD J. JACOBS

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24 BY: HELEN DAVIS CHAITMAN, ESQ.

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1 ALSO PRESENT TELEPHONICALLY:

2 KEVIN H. BELL

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1 these same things in all of those cases.

2 What the Trustee has done in discovery in this  
3 case is quite remarkable, and I believe unprecedented, and  
4 we're very proud of it. Without even receiving a discovery  
5 request, we provide every single defendant with what we  
6 refer to as their core account documents, which are their  
7 customer statements, the cash activity of their accounts,  
8 their correspondence files with all of their correspondence  
9 to and from BLMIS over the life of their account; the  
10 account opening and closing documents; and in addition to  
11 that all of the applicable financial statements from BLMIS's  
12 financial institutions showing the bank transfer records  
13 from those independent third parties with respect to the  
14 cash activity in each and every single account.

15 Where we don't have a complete set of customer  
16 statements, we produce portfolio management reports, which  
17 contain exactly the same information of the cash activity  
18 over the life of the account. Where we don't have those, we  
19 produce spiral notebooks where various employees over time  
20 at BMOIS kept meticulous notes of that cash transaction  
21 activity.

22 And we provide that to every defendant. Wilenitz  
23 is no exception. We produced, I believe, approximately,  
24 19,000 records that we've indexed to make it easy for the  
25 defendant to navigate exactly what's in that --

1 THE COURT: 19,000 records for Wilenitz?

2 MR. JACOBS: For the Wilenitz accounts, correct,  
3 over the life of their accounts. And that includes all of  
4 the items that I just discussed.

5 In addition to that, obviously, it is the  
6 Trustee's burden of proof to prove that BLMIS was operating  
7 a fraudulent Ponzi scheme and was insolvent. So, as the  
8 Court I believe --

9 THE COURT: Why do you have to prove insolvency?  
10 You don't have to prove insolvency for an intentional  
11 fraudulent transfer. These are good faith cases.

12 MR. JACOBS: Right. Well, that is, I believe, our  
13 burden in the bad faith actions as well.

14 THE COURT: Why? To prove insolvency in an actual  
15 fraudulent transfer claim -- I've never heard of that.

16 MR. JACOBS: Well, that may very well be correct,  
17 Your Honor, but nonetheless, we have endeavored to make all  
18 of BMOIS's financial records available.

19 THE COURT: Let me ask, Ms. Chaitman, do you think  
20 that insolvency is an issue in these cases? Since their  
21 limited to intentional fraudulent transfers?

22 MS. CHAITMAN: I do, Your Honor.

23 THE COURT: Why?

24 MS. CHAITMAN: If, in fact, they could only  
25 recover transfers made within the last two years, then the



1 Wilenitz matter, but a copy of that report has been served  
2 to Ms. Chaitman on behalf of some of her other clients in  
3 different proceedings. And in Section 4C of the procedures  
4 order, that permits the Trustee to handle the voluminous  
5 nature of discovery that's potentially relevant in this case  
6 in that fashion.

7 THE COURT: Well, does Ms. Chaitman or any other -  
8 - clients or any other defendant have the ability to look at  
9 the same documents that your expert looked at and draw their  
10 own conclusions?

11 MR. JACOBS: Absolutely. Every single document --  
12 what we've endeavored to do, Your Honor, is that what we  
13 refer to as Electronic Data Room 1 contains all of the  
14 underlying documents considered by Mr. Dubinsky and we're  
15 also building upon that in including documents that our  
16 other experts who we may offer to prove transactions and who  
17 do other functions, all of those documents as well. So,  
18 that's approximately 4 million records. Not pages, but  
19 records.

20 And it's an enormous amount of data that I believe  
21 is unprecedented, at least in my career, and for that reason  
22 we've structured the data room in a very organized fashion  
23 with issue trees. So if you're a participant who's  
24 accessing the data room, you'll see something that you might  
25 be familiar with already in terms of like, an Outlook email

1 folder tree that has topics, broken down documents,  
2 financials, third party records; and then each of those  
3 trees can be broken down further to drill down to J.P.  
4 Morgan statements. You know, Chicago Options Trading  
5 information, Depository Trust Clearing Corporation  
6 documents; all of those types of things. It's also  
7 searchable.

8 So, absolutely the Defendant has the ability to  
9 conduct whatever investigation they believe is relevant to  
10 the claims of their defenses, the same that our expert did,  
11 and they have access to all the same information that our  
12 expert did. And we did that to be transparent and to  
13 provide any data that any litigant believes that they should  
14 have access to.

15 So, that's the starting point of where we are in  
16 discovery. And then because Section 4C of the procedures  
17 order allows us to provide a summary report, we do that.  
18 And Mr. Dubinsky painstakingly analyzes the Ponzi scheme and  
19 the IA business specifically, but also the other aspects of  
20 BLMIS's businesses as well. And issues of insolvency are  
21 also part of his analysis to the extent they may bear on the  
22 Ponzi scheme or on other proofs we may have, or have had at  
23 some point in our cases.

24 But all of the financials are considered, the  
25 Ponzi scheme is considered, the stock-trading activity or

1 THE COURT: And, again, this comes back to my  
2 understanding of the records. If you have tables of content  
3 or indices...

4 MR. JACOBS: I do.

5 THE COURT: I don't want to see them now.

6 MR. JACOBS: Okay.

7 THE COURT: If you have those things and somebody  
8 can look at them and see the subject matter of what they  
9 want to look at, figure out what to look at, fine.

10 MR. JACOBS: There is a subfolder in Data Room 1  
11 that is called DTC that has all of those records.

12 MS. CHAITMAN: I'm not asking for -- I have the  
13 DTC records.

14 THE COURT: She wants other non-DTC records.

15 MR. JACOBS: To the extent we have them in  
16 addition to publicly available information that we obtain,  
17 it's all in the data room clearly labeled.

18 THE COURT: You'll have to show me when the time  
19 comes. 17 -- these are the number of employees that work  
20 for each unit.

21 MR. JACOBS: Yes, Your Honor. And as I had  
22 mentioned before, we provided a specific chart that contains  
23 this exact information, even though I believe we're not  
24 obligated to because it had already been made available in  
25 the data room and could've been found with the click of a

1 shows up in Wilenitz's account statement, you can make the  
2 argument that he actually owned that stock. But you can do  
3 that (indiscernible) and the information has been made  
4 available to you.

5 And the sense I'm getting -- and I understand that  
6 it's a lot of work -- is you want the Trustee to do this for  
7 you, but you're going to have to do this yourself if this  
8 stuff is available.

9 MS. CHAITMAN: You know, Judge, with 4 million  
10 pages of documents, the least the Trustee could do is  
11 specify the specific Bates Numbers. Because I don't want to  
12 be in a position where we go to trial... I mean, for all I  
13 know, the data room is updated constantly and new documents  
14 are added. How am I going to prove at trial that certain  
15 documents were not made available to me? I mean, it's  
16 impossible. Why can't the Trustee be bound to tell me these  
17 are the documents responsive to this request?

18 THE COURT: But that doesn't solve your problem...  
19 Well, if the Trustee has additional documents, he's got to  
20 supplement the disclosure or the production, which he does  
21 by adding them to the data room, and maybe you have a  
22 continuing duty to check the data room.

23 But part of the problem is you've thrown such a  
24 broad net over what you're looking for, instead of the  
25 specific documents relevant -- that I think seem to be

1 relevant to this particular case, that you run into a  
2 situation where there may be documents added about something  
3 but they have nothing to do with Wilenitz.

4 MR. JACOBS: And, Your Honor, specifically to  
5 respond to Ms. Chaitman's concern about the data room being  
6 voluminous, and I understand that 4 million records is  
7 overwhelming, but that's the reason why the procedures order  
8 permits us to provide an expert summary report to support  
9 our claims and to satisfy our burdens of proof, which  
10 specifically discusses all of that data, identifies all of  
11 the Bates Numbers of the documents that are used to support  
12 various conclusions -- and at a minimum, Ms. Chaitman is  
13 free to depose those experts and to test and challenge any  
14 of those analyses based on any of the documents they've  
15 relied upon or that she has access to in discovery.

16 And no one's challenging her right to do that.  
17 What we're saying is that we shouldn't have to do more than  
18 what we've already done because we have invested enormous  
19 amounts of resources and time in finding a way to make all  
20 of those information available to all litigants in order for  
21 them to conduct their own investigations and have access to  
22 the same information that we do.

23 THE COURT: Well, you know, I started out by  
24 saying, I can't tell you not to make a motion to compel, but  
25 I think that if you go back, for example, and look at the

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

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Date: May 19, 2016